

**Jude Schumaker, A Sole Proprietorship d/b/a Schumaker Brothers Operating Engineers and Local 465, Laborers International Union of North America, AFL-CIO. Case 7-CA-23756**

November 30, 1990

**SUPPLEMENTAL DECISION AND ORDER**

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On February 19, 1985, the National Labor Relations Board issued a Decision and Order in this proceeding<sup>1</sup> in which it, inter alia, ordered the Respondent to make the unit employees whole by making all payments into the employee pension plan, vacation and holiday fund, health care fund, and training fund of Local 465, Laborers International Union of North America, AFL-CIO, and by reimbursing the unit employees for any expenses ensuing from the Respondent's failure to make such payments. On June 21, 1985, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.<sup>2</sup> A controversy having arisen over the amounts due under the Board's Order, as enforced by the court, the Regional Director for Region 7 on July 19, 1990, issued and caused to be served on the Respondent a compliance specification and notice of hearing alleging the amounts due under the terms of the Board's Order. Subsequently, the Respondent filed an answer and an amended answer to the compliance specification generally denying or claiming a lack of knowledge regarding several allegations, including the amounts due under the Board's Order.<sup>3</sup>

On September 17, 1990, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. The General Counsel alleges that the Respondent's amended answer fails to comply with the Board's Rules and Regulations. On September 19, 1990, the Board issued an order transferring proceedings to the Board and Notice to Show Cause why the motion should not be granted.

On October 3, 1990, the Respondent filed a response to the Notice to Show Cause, with exhibits attached. In its response, the Respondent asserts that it answered the compliance specification by denying certain allegations or by asserting that it lacked knowledge by which

to answer certain allegations. Additionally, the Respondent asserts that the parties' collective-bargaining negotiations have never been completed, the Respondent did not sign a bargaining agreement with the Union, the Respondent did not receive favorable concessions as promised by the Union, the Union attempted to force a contract on the Respondent, and that the Regional Office has never explained why the amended answer to the compliance specification was insufficient.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following

**Ruling on Motion for Summary Judgment**

The Respondent's amended answer fails to raise any issue with respect to the compliance specification warranting a hearing. The amended answer generally denies or claims a lack of knowledge regarding the existence and/or contents of the collective-bargaining agreement. Thus, it is clear that the Respondent's amended answer attempts to contest the existence of the parties' collective-bargaining agreement and that the Respondent violated the Act by failing to make payments required by that agreement, matters which were determined in the Board's prior decision enforced by the Sixth Circuit Court of Appeals. The Board's findings and conclusions in a prior unfair labor practice case may not be relitigated by a respondent in a compliance proceeding. *Ford Bros.*, 284 NLRB 211, 213 (1987); *Brown & Root, Inc.*, 132 NLRB 486, 492 (1961), *enfd.* 311 F.2d 447, 451 (8th Cir. 1963).<sup>4</sup>

Nor does the Respondent otherwise raise any issue warranting a hearing with respect to the compliance specification. In response to the Board's Notice to Show Cause, the Respondent generally asserted that a controversy exists involving this matter, that the Respondent had filed a sufficient amended answer to the compliance specification, that the Respondent had not violated the Act as found in the Board's underlying decision, and that the Respondent should be "granted a hearing and/or grant my appeal to reverse the default judgment." These assertions merely constitute a further attempt to relitigate the Board's prior unfair labor

<sup>1</sup> 274 NLRB No. 21 (unpublished).

<sup>2</sup> No. 85-5318 (unpublished).

<sup>3</sup> The compliance specification was served on the Respondent by certified mail on July 19, 1990, and was subsequently returned to the Regional Office with the notation "refused." The compliance specification was again served on the Respondent by certified mail on August 2, 1990. The return receipt was either not returned by the post office or misplaced by the Regional Office.

The Respondent's refusal or failure to claim certified mail does not defeat the purposes of the Act. *Delta Star Trucking*, 288 NLRB No. 63 at fn. 1 (Apr. 22, 1988) (not reported in bound volume); *Sheet Metal Workers Local 49 (Driver-Miller Plumbing)*, 124 NLRB 888, 890 (1959); *Pasco Packing Co.*, 115 NLRB 437 (1956). Further, the filing of an answer by the Respondent indicates that the Respondent actually received the compliance specification. *Sanford Home for Adults*, 280 NLRB 1287, 1288 (1986).

<sup>4</sup> To the extent that the amended answer generally denies the accuracy of the backpay figures, the amended answer fails to satisfy the requirements of Sec. 102.56(b) of the Board's Rules and Regulations, which provides in pertinent part:

[I]f the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

These matters are within the Respondent's knowledge and control and its failure to set forth fully its position as to the applicable premises or to furnish appropriate supporting figures is contrary to the specificity requirements of Sec. 102.56(b). Accordingly, pursuant to Sec. 102.56(c) of the Board's Rules, the backpay figures contained in the specification are deemed admitted.

practice findings and, like the Respondent's amended answer, do not raise any issue with respect to the compliance specification which warrants a hearing.

In the absence of any issue with respect to the specification which warrants a hearing, we grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net amounts due are as stated in the compliance specification and we will order payment by the Respondent to the pension plan and other funds listed below on behalf of the unit employees.<sup>5</sup>

<sup>5</sup>However, we shall not order payment to the industry advancement fund inasmuch as such a fund is a permissive, nonmandatory subject of bargaining. See *Finger Lakes Plumbing & Heating Co.*, 254 NLRB 1399 (1981).

## ORDER

The National Labor Relations Board orders that the Respondent, Jude Schumaker, a Sole Proprietorship d/b/a Schumaker Brothers Operating Engineers, Monroe, Michigan, his agents, successors, and assigns, shall make whole the affected unit employees by payment to the pension plan and other benefit funds listed below the following amounts, plus any additional amounts (see *Merryweather Optical Co.*, 240 NLRB 1213 (1979)):

Health and Welfare	\$ 913.50
Pension	593.77
Vacation	867.82
Training Fund	36.54